

**FEDERAL COURT OF MALAYSIA CIVIL APPEAL NO. 02(f)-45-05/2017(B)**  
Court of Appeal Civil Application No. B-02(IM)-1996-12/2015  
Shah Alam High Court Company Winding-up No. MT-FLJC28-81-2011

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**BETWEEN**

**GULA PERAK BERHAD  
(NO. SYARIKAT: 8104-X) .. APPELLANT**

**AND**

**DATUK LIM SUE BENG .. RESPONDENT**

**HEARD TOGETHER**

**FEDERAL COURT OF MALAYSIA CIVIL APPEAL NO. 02(f)-46-05/2017(B)**  
Court of Appeal Civil Application No. B-02(IM)-1995-12/2015  
Shah Alam High Court Company Winding-up No. MT-FLJC28-81-2011

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**BETWEEN**

**GULA PERAK BERHAD  
(NO. SYARIKAT: 8104-X) .. APPELLANT**

**AND**

**YAKIN TENGGARA SDN BHD  
(NO. SYARIKAT: 410040 - M) .. RESPONDENT**

**HEARD TOGETHER**

**FEDERAL COURT OF MALAYSIA CIVIL APPEAL NO. 02(f)-59-06/2017(B)**  
Court of Appeal Civil Application No. B-02(IM)-1995-12/2015  
Shah Alam High Court Company Winding-up No. MT-FLJC28-81-2011

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**BETWEEN**

**AMBANK (M) BERHAD  
(NO. SYARIKAT: 8515-D) .. APPELLANT**

**AND**

- 1. YAKIN TENGGARA SDN BHD  
(NO. SYARIKAT: 410040 - M)**
- 2. GULA PERAK BERHAD  
(NO. SYARIKAT: 8104-X)**
- 3. DATUK LIM SUE BENG**
- 4. FAITHMONT ESTATE SDN BHD  
(NO. SYARIKAT: 688015-P)**
- 5. RHB BANK BERHAD  
(NO. SYARIKAT: 6171-M)  
(menggantikan Infra Purnama Sdn Bhd  
Menurut Perintah Mahkamah Bertarikh 7.6.2011)  
(Not Appointed) .. RESPONDENTS**

**HEARD TOGETHER**

**FEDERAL COURT OF MALAYSIA CIVIL APPEAL NO. 02(f)-60-06/2017(B)**  
**Court of Appeal Civil Application No. B-02(IM)-1996-12/2015**  
**Shah Alam High Court Company Winding-up No. MT-FLJC28-81-2011**

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**BETWEEN**

**AMBANK (M) BERHAD  
(NO. SYARIKAT: 8515-D)**

**.. APPELLANT**

**AND**

- 1. DATUK LIM SUE BENG**
- 2. GULA PERAK BERHAD  
(NO. SYARIKAT: 8104-X)**
- 3. YAKIN TENGGARA SDN BHD  
(NO. SYARIKAT: 410040-M)**
- 4. FAITHMONT ESTATE SDN BHD  
(NO. SYARIKAT: 688015-P)**
- 5. RHB BANK BERHAD  
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Menurut Perintah Mahkamah Bertarikh 7.6.2011)  
(Not Appointed)**

**.. RESPONDENTS**

**HEARD TOGETHER**

**FEDERAL COURT OF MALAYSIA CIVIL APPEAL NO. 02(f)-65-06/2017(B)**  
**Court of Appeal Civil Application No. B-02(IM)-1995-12/2015**  
**Shah Alam High Court Company Winding-up No. MT-FLJC28-81-2011**

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**BETWEEN**

**FAITHMONT ESTATE SDN BHD  
(NO. SYARIKAT: 688015-P)**

**.. APPELLANT**

**AND**

**YAKIN TENGGARA SDN. BHD**

**.. RESPONDENT**

**HEARD TOGETHER**

**FEDERAL COURT OF MALAYSIA CIVIL APPEAL NO. 02(f)-61-06/2017(B)**

**Court of Appeal Civil Application No. B-02(IM)-1996-12/2015**

**Shah Alam High Court Company Winding-up No. MT-FLJC28-81-2011**

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**BETWEEN**

**FAITHMONT ESTATE SDN BHD  
(NO. SYARIKAT: 688015-P)**

**.. APPELLANT**

**AND**

**DATUK LIM SUE BENG**

**.. RESPONDENT**

**HEARD TOGETHER**

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**FEDERAL COURT OF MALAYSIA CIVIL APPEAL NO. 02(f)-65-06/2017(B)**

**Court of Appeal Civil Application No. B-02(IM)-1995-12/2015**

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**BETWEEN**

**FAITHMONT ESTATE SDN BHD  
(NO. SYARIKAT: 688015-P)**

**.. APPELLANT**

**AND**

**YAKIN TENGGARA SDN BHD  
(NO. SYARIKAT: 410040-M)**

**.. RESPONDENT**

**CORAM**

**ZULKEFLI AHMAD MAKINUDIN, PCA**

**RAMLY HJ ALI, FCJ**

**AZAHAR MOHAMED, FCJ**

**BALIA YUSOF HJ WAHI, FCJ**

**ALIZATUL KHAIR OSMAN KHAIRUDDIN, FCJ**

## **JUDGMENT OF THE COURT**

1. These are six appeals heard together before us. The appeals are as follows:

- (i) two appeals vide Civil Appeal No: 02(f)-45-06/2017 (B) and Civil Appeal No: 02 (f)-46-05/2017 (B) where the appellant in both appeals is Gula Perak Berhad (Gula Perak); and the respondents respectively are Datuk Lim Sue Bing (Datuk Lim) and Yakin Tenggara Sdn. Bhd. (Yakin Tenggara) - (Gula Perak Appeals);
- (ii) two appeals vide Civil Appeal No: 02(f)-59-06/2017 (B) and Civil Appeal No: 02(f)-60-06/2017 (B) where the appellant in both appeals is Ambank (M) Berhad and the respondents are Datuk Lim, Gula Perak, Yakin Tenggara, Faithmont Estate Sdn. Bhd. (Faithmont) and RHB Bank Berhad (RHB) - (Ambank Appeals);
- (iii) two appeals vide Civil Appeals No: 02(f)-61-06/2017 (b) and Civil Appeals No: 02(f)-65-06/2017 (B) where the appellant in both appeals is Faithmont and the

respondents are Datuk Lim and Yakin Tenggara respectively (Faithmont Appeals).

In this judgment, parties will be referred to by their respective names.

### **Factual Background**

2. Gula Perak was incorporated on 1.10.1968 as a public limited company by shares. It had obtained financial assistance from syndicated term loan lenders, namely - Aseambankers Malaysia, RHB Bank Berhad, Ambank (M) Berhad, DBS Bank LTD Cawangan Labuan, Alliance Merchant Bank Berhad, Malaysian Industrial Development Finance Berhad, Southern Bank Berhad, Affin Bank Berhad and Malayan Banking Berhad (the Lenders).
3. Gula Perak was not able to service the syndicated term loan facility. A civil suit (Kuala Lumpur High Court Suit No: D5-22-1648-2005) was filed by the Lenders against Gula Perak and its guarantor, Datuk Lim. After a full trial, judgment was granted on 29.10.2010 in favour of the Lenders. The judgment became final upon the dismissal of

an application for leave to appeal to the Federal Court on 25.06.2011.

4. On 15.03.2011, a company by the name Infra Purnama Sdn. Bhd. (“Infra”) presented a winding-up petition under section 218 of the Companies Act 1965 at the Shah Alam High Court against Gula Perak on the ground of its inability to pay Infra a debt amounting to RM4,004,459.70. A copy of the winding-up petition and the affidavit verifying petition was forwarded by Infra’s solicitors to RHB’s solicitors. RHB’s solicitors thereafter filed a notice of intention to appear and to support the winding-up petition. However, Infra’s petition was subsequently struck out by the Court when Infra applied to withdraw it on the ground that Gula Perak had paid Infra’s outstanding debt.
5. RHB being a judgment creditor of Gula Perak was however desirous to proceed with the winding up petition. RHB thereafter applied to set aside the order striking out the winding up petition. RHB was successful in its application and by a Court order dated 7.06.2011 RHB was substituted

as the petitioner in the winding-up petition. Alliance, Affin, DBS, Ambank, Maybank and CIMB Bank Berhad were supporting creditors to the winding-up petition.

6. On 1.03.2013, RHB's winding up petition to wind up Gula Perak was granted by the Court. Since the winding-up order, the affairs and management of Gula Perak was administered by court appointed liquidators namely Ooi Woon Chee and Ong Hock An (later replaced by Mohamed Raslan Abdul Rahman).
7. As at 31.07.2010, Gula Perak was indebted to the amount of RM74,897,326.66 to Ambank and as at the date of its winding-up on 1.03.2013, Gula Perak was still indebted to Ambank to the total sum of RM81,037,450.62.
8. Initially, Gula Perak was granted a term loan of RM190,000,000.00 by Ambank under a term loan agreement dated 13.11.1997. Gula Perak defaulted payments and in view of settlement with Ambank, Gula Perak issued 5-year 3% redeemable secured bonds for a nominal value of RM90,124,000.00 on 8.10.1999 for the full

and final settlement of the term loan. The bonds were secured by a legal charge in favour of Ambank, executed over an oil palm estate land known as Sitiawan Estate held under H.S. (D) 1668, P.T. No. 1058, Mukim Durian Sebatang, District of Hilir Perak, Perak Darul Ridzuan (“Lot 1058”). It followed that the charge was then substituted with a deed of assignment dated 17.10.2006.

9. Gula Perak remained in default of the repayment to Ambank. Following this string of defaults, Ambank sought to realize the deed of assignment but only to be hindered by a caveat lodged by Faithmont on the said land.
10. Before the commencement of the winding-up proceeding against Gula Perak, on 25.03.2010, Faithmont initiated a civil action against Gula Perak in the High Court of Malaya at Kuala Lumpur vide Civil Suit No. S-24-636-2010 claiming for specific performance of a sale and purchase agreement dated 28.10.2005 in respect of the said land.
11. In another related suit, Faithmont had on 13.04.2012 also filed a suit against Ambank in respect of the said land in the



High Court at Kuala Lumpur vide Civil Suit No. 22NCVC-438-04/2012 for the removal of the caveat on the said land. All the suits involved the same land and therefore they were consolidated and full trial proceeded before Justice Kamaludin Said. In the midst of trial, the dispute was successfully mediated as a result of which Gula Perak, Faithmont, and Ambank reached a compromise.

12. Enclosure 80 was an application by the liquidators of Gula Perak pursuant to section 236(1)(c) of the Companies Act 1965 for the High Court's approval to enter into a compromise to sell off a piece of land in view of the debt between Gula Perak, Faithmont and Ambank. The application was opposed by Yakin Tenggara, a contributory of Gula Perak and Datuk Lim, a preferred creditor in the sum of RM150,000.00 and an unsecured creditor in the sum of RM28.2 million. On 4.11.2015, enclosure 80 was allowed by the High Court and a compromise order was obtained.

13. On 11.11.2015, one week after the compromise order was obtained, parties then entered into a consent judgment before Justice Kamaluddin Said, on the terms, on which date itself, RM2.6 million was paid by the liquidators of Gula Perak to Ambank's solicitors, being 10% of the redemption sum of RM26 million. The balance sum of RM23.4 million was paid on 23.03.2016.
14. On appeal to the Court Of Appeal by Yakin Tenggara and Datuk Lim, the Court of Appeal allowed both their appeals and set aside the order of the High Court with regard to the compromise. Aggrieved with the decision of the Court of Appeal, Gula Perak, Ambank and Faithmont filed their respective applications for leave to appeal to this court. On 4.05.2017, this court granted leave to appeal in all six cases. Hence the present appeals before us.

### **Leave Questions**

15. Leave to appeal in all six cases were granted by this court on the following questions:

## **Gula Perak's Appeals**

**“Whether a sale and purchase agreement to sell estate land to a purchaser wherein it is a condition precedent that the transfer of the land will only be effected to the purchaser after and subject to the approval of the Estate Land Board contravenes section 214A(1) of the NLC”.**

## **Ambank's Appeals**

- (i) “Whether section 214A of the National Land Code 1965 applies to a conditional or contingent contract for the sale and purchase of an estate land, where such conditional or contingent contract provides that any sale of such land is conditional upon and subject to the approval of the Estate Land Board?”**
- (ii) “Whether the Court may hold that a sale agreement of estate land is void as no prior Estate Land Board approval for the transfer of such land was obtained prior to such agreement, notwithstanding that the Estate Land Board had already granted its approval for such transfer and the land already been transferred?”**

## **Faithmont's Appeals**

- (i) “Where parties enter into a Sale and Purchase Agreement (SPA) involving ‘estate land’ (as defined in section 214A(11), National Land Code 1965 (NLC) with a condition precedent in the SPA that it is subject to obtaining the approval of the Estate Land Board (the Board):
- (a) Is such a conditional SPA in breach of section 214A(1) NLC when no prior approval is obtained from the Board before entering into the SPA?
- (b) Does section 214A(1) NLC require approval of the Board before entering into the SPA failing which the SPA is void or illegal?”
- (ii) “Whether pursuant to a proper construction of section 214A(4) NLC, the conditional SPA is merely a manifestation of the proprietor “desiring to transfer, convey or dispose of in any manner whatsoever such land” for joint submission together with “the person to whom the land is to be transferred, conveyed or disposed” vide an application to the Board in Form

14D and accordingly such a conditional SPA is within the intent and scope of sections 214A(1) and 214A(4) of NLC?”

- (iii) “In the circumstances where the conditional SPA has been supplanted by a consent order duly recorded by the High Court between the proprietor “desiring” to transfer and “the person to whom the land is to be transferred” and such Consent Order is similarly subject to approval by the Board: whether the Consent Order complies with section 214A(1) and section 214A(4) of NLC.”
16. All the leave questions in all the appeals though differently worded, come to one common issue, that is:
- Whether a conditional agreement to sell an estate land (SPA) to a purchaser with a condition precedent that the sale was subject to obtaining the approval of the Estate Land Board is in breach of section 214A(1) of the NLC when no prior approval is obtained from the Board before entering into the said SPA?

17. At the outset, for easy understanding of the matter at hand, it would be appropriate at this juncture to familiarize ourselves with the relevant provisions of section 214A(1) of the NLC.

18. Section 241A(1) of the NLC provides as follows:

**“214(A). Control of transfer of estate land**

*(1) Notwithstanding anything contained in this Act, no estate land is capable of being transferred, conveyed or disposed of in any manner whatsoever, unless approval of such transfer, conveyance or disposal has first been obtained from the Estate Land Board (here in after referred to as “the Board”) established under subsection (3).”*

19. The conditional SPA in the present appeal was in the form of a compromise which was successfully mediated between Gula Perak (as the debtor), Faithmont (as the creditor) and Ambank (as the lender) in various ongoing suits between them at the Kuala Lumpur High Court which later was recorded as a consent judgment between the parties. Yakin was not a party to the said conditional SPA. Yakin contended that the compromise or the SPA was an

illegal compromise simply because the parties to the compromise have yet to obtain the Estate Land Board's approval under section 214A of the NLC.

### **At the High Court**

20. The learned judge of the Shah Alam High Court made her finding that the compromise or the SPA was not at all in contravention of the NLC and remains valid and enforceable between the parties thereto.

21. In her judgment, the learned judge said:

*“Let this Court be clear from this juncture that this section only stipulates that a transfer of estate land requires the Estate Land Board's approval and a transfer without such approval shall render the transfer invalid and parties involved in the transfer shall be liable to an offence. The Section does not mention of any agreements to transfer estate land, but specifically the act of transferring the estate land. This is the distinction that Yakin had unfortunately failed to understand. The compromise itself was pre-conditioned with the attainment of the proper approval from the Estate Land Board. The compromise was entered in view of full compliance of the*

*National Land Code. And such agreement is verily valid by law. Again, it is the act of transferring without approval that is an offence, not the agreement to transfer.”*

22. The learned judge distinguished this case with a Court of Appeal case of **Tai Thong Flowers Nursery Sdn. Bhd. v Master Pyrodor Sdn. Bhd. (2014) 9 CLJ 74**, and ruled as follows:

*“Yakin had also placed a misconceived reliance on the decision of Tai Thong Flower Nursery Sdn. Bhd. v Master Pyrodor Sdn. Bhd. (2014) 9 CLJ 74. The Court of Appeal decision here instead was in the favour of the Liquidators and nowhere in the favour of Yakin. In Tai Thong’s case, the prevailing issue is not the agreement to transfer, but the sheer act of transferring without approval itself. Clearly the act of transferring estate land without approval contravenes the National Land Code. It is vivid that the Court of Appeal had employed many qualifications in explaining its decision so as to not lead to confusion, which remarkably, Yakin indeed is confused. The Court of Appeal had clearly held that an agreement to transfer estate land without prior approval of Estate Land Board is NOT void:*



*“S. 214A of the NLC did not itself provide that an agreement to transfer, convey or dispose of estate land without the approval of the Estate Land was void”*

*Following this qualification, the Court of Appeal proceeded to hold that, it is instead the consequent act of transferring the estate land without approval that is in contravention with the National Land Code. The wording used was conjunctive, particularly the word “and”:*

*“.....any contract for such transfer, conveyance or disposal **AND** consequently any memorandum of transfer pursuant to such contract, was liable to be struck down as being void for illegality...”*

*It is only if the contract was performed and the transfer was affected without the proper approval that the entire transaction becomes null and void. The isolated agreement to transfer without prior approval is not at all legally wrong. Clearly the Court of Appeal in the case had emphasized on the ensuing and consequent transfer without approval rather than the singular and isolated act of entering into the agreement.”*

**23. The learned judge also relied on the decision of the Melaka High Court in the case of Rengamah A/P Rengasamy v Tai Yoke Lai & Anor (1998) 5 MLJ 260 in understanding the relevant part of section 214A of the NLC and she concluded**

that *“the provision does not intend to invalidate agreements to transfer, but to invalidate transfers in absence or approval. It was also held that there is absolutely nothing illegal to enter into an agreement in contemplation of the approval although approval has yet been obtained.”*

24. The conclusion made by the learned judge was that *“Yakin and Datuk Lim have ultimately failed to prove their case against the notice of motion (Enclosure 80)”* and *“consequently, this court grant order-in-terms of Enclosure 80, for the liquidators to enter into the compromise between GPB (Gula Perak), the bank as well as Faithmont.*

### **At the Court of Appeal**

25. On appeal, the Court of Appeal allowed the appeals and set aside the order of the High Court. The Court of Appeal disagreed with the learned High Court Judge, and was of the view that *“the legislative intent behind section 214A(1) of the Land Code is clear, that it prohibits the transfer,*

*conveyance or disposal of estate land “in any manner whatsoever” without first obtaining the approval of the Land Board.”*

26. The relevant parts of the Court of Appeal’s judgment on the issue are reproduced as follows:

*“(42) Assuming for a moment that Gula Perak and Ambank are right in their contention that the “agreement” to transfer, not being a “transfer” did not require prior approval of the Land Board and therefore not prohibited by section 214A(1), the question one has to ask is whether such agreement was an attempt by Gula Perak to “transfer”, to “convey” or to “dispose of” the land “in any manner whatsoever” within the meaning of section 214A(1).*

*(43) We would think so. Although no actual “transfer” took place at the time of the compromise, in the sense that the land was not registered in the name of Faithmont, the simple truth is that the consensus ad idem and the common intention between the parties was to “transfer”, to “convey” or to “dispose of” the land without first obtaining the approval of the Land Board as required by section 214A(1) of the Land Code.*

*(44) There is no mistaking their intention that the approval from the Land Board was only to be obtained later, i.e. after the*

*compromise had been approved by the court, but by the time the compromise was approved on 4.11.2015, 10 years had passed since the agreement was executed on 28.10.2005. That is a very long delay by any measure of time.*

*(45) Clearly this was an attempt to “transfer, convey or dispose of” estate land without first obtaining the approval of the Land Board, an offence under section 214A(10A)(a) of the Land Code. The attempt is obvious as Rm5.7 million had been paid towards the purchase price, and Faithmont had taken vacant possession of the land on 16.11.2005, barely one month after executing the agreement on 28.10.2005.*

*(46) For all intents and purposes, the land had been “disposed of” to Faithmont since 16.11.2005 without the approval of the Land Board. What the compromise sought to achieve was to validate that unlawful act of disposal. Like the execution of the agreement on 28.10.2005, the compromise was yet another attempt by Gula Perak to circumvent the strict requirement of prior approval under section 214A(1) of the Land Code.*

*(47) For a compromise under section 236 of the Companies Act to be valid, it must be lawful. A compromise to do an unlawful act or to validate an unlawful act is null and void and has no effect whatsoever and we can say without fear of contradiction that neither the court nor the committee of inspection nor any other authority for that matter can legalize an otherwise illegal act.*

*The compromise order is therefore void for illegality under section 24 of the Contracts Act 1950.”*

**27. The Court of Appeal further held:**

*“In the context of contingent contracts involving estate land, we are inclined to think that it will be against the spirit and policy consideration behind section 214A(1) of the Land Code to allow estate landowners to execute sale and purchase agreements without first obtaining the approval of the Land Board. If Parliament has expressed a clear intention to prohibit transfer, conveyance or disposal of estate land “in any manner whatsoever” without the prior approval of the Land Board on pain of criminal prosecution, it stands to reason that an agreement to “transfer, convey or dispose of” estate land without first obtaining the approval of the Land Board will likewise be against the spirit and policy consideration behind section 214A(1) of the Land Code.”*

**28. The Court of Appeal also held:**

*“(70) If the legislature had intended to exempt conditional agreements from the operation of section 214A(1), it would have said so in clear terms. There is none in the whole of section 214A. On the contrary, it provides through section 214A(10A)(a) that it is an offence to even attempt to “transfer,*

*convey or dispose of any manner whatsoever any estate land in contravention of section (1).*

*(71) We are therefore unable to agree with Rengasamy that a conditional contract to sell estate land would only become void if the Land Board refuses approval of the sale. In our view such contract of sale is void from the beginning if no approval from the Land Board had first been obtained prior to the execution of the agreement.*

*(72) The corollary is that the consent judgment entered into between the parties on 11.11.2015 pursuant to the compromise order is void, not because Gula Perak breached any term of the compromise order but because it was an agreement by Gula Perak to “transfer, convey or dispose of” estate land without first obtaining the approval of the Land Board, which as we said is an offence under section 214A(10A)(a) of the Land Code and therefore a breach of section 214A(1).”*

**29. The Court of Appeal was in agreement with the following pronouncement in *Tai Thong* (supra);**

*“The presence of the words “desiring to transfer, convey or dispose of in any manner whatsoever such land” and the words “to whom the land is to be transferred, conveyed or disposed of”(emphasis added) in sub-s. 214A(4) clearly meant that the*

*obtaining of the approval must be done before the execution of the agreement by which the land would be conveyed or disposed of.”*

30. The Court of Appeal also expressed its agreement with Yakin that based on the illegal act of Gula Perak, Faithmont and Ambank in entering into the compromise without first obtaining the approval of the Land Board, the court is empowered to reverse the compromise order and to reinstate the position of the parties to their positions prior to the grant of the compromise order.
31. In conclusion, the Court of Appeal allowed Yakin and Datuk Lim’s appeals and set aside the decision of the High Court approving the compromise and ordered that the position of the parties were to be restored to the position they were in prior to the compromise order.

### **Appellants’ Contentions**

32. The appellants shared a common contention in their respective appeals. It can be summarised as follows:

- (a) section 214A(1) of the NLC was legislated for the express purpose of ensuring that no estate land is transferred, conveyed or disposed without approval first being obtained from the Estate Land Board. It was not intended to be a bar to preclude parties from even entering into a conditional SPA involving estate land; this reasoning is consistent with the language and spirit of section 214A(1) of the NLC which provides that there can be no transfer of estate land without approval of the Estate Land Board having first been obtained; and**
- (b) the SPA being a conditional agreement cannot therefore be declared as void and illegal. The SPA will only become null and void if the Estate Land Board had refused or did not grant approval for the transfer of the said land to be registered, and yet parties proceeded to transfer it.**



## **Respondents' Contentions**

- 33.** The crux of the respondents' contention was that section 214A(1) of the NLC was as plain and clear as language can express it. It prohibits any agreement to transfer, convey and dispose of estate land without first obtaining the approval of the Estate Land Board. In the present case, no such approval was obtained prior to the entering of the compromise or the SPA. Thus, the Court of Appeal had correctly held that the compromise or agreement contravenes section 214A(1) of the NLC and therefore void for illegality.
- 34.** It was also contended by the respondents that section 214A(1) of the NLC is strictly worded and failure to comply with the said section is an offence under section 214A(10A) of the NLC. Citing the case of **Tai Thong** (*supra*) and the provisions of section 214A(4) of the NLC, this clearly mean that the Land Board's approval must first be obtained before the execution of any agreement to dispose of the land. The words "*in any manner whatsoever*"

appearing in the section cover not only the actual transfer but any agreement to transfer the estate land.

35. The respondents concluded that the agreement in question or the compromise as well as the related consent order in the present case ought to be rendered illegal, void and unenforceable as they are sufficiently linked to the statutory prohibition of section 214A(1) of the NLC.

### Our decision

36. The crux of all the appeals before us revolves on the interpretation or construction of section 214A(1) of the NLC. To start with, it would be pertinent to highlight some of the basic principle followed by the Court in giving an interpretation to statutes passed by Parliament.
37. On the issue of an interpretation to statutes, this Court in **Siva Segara Kanapathi Pillay v. Public Prosecutor (1984) 1 CLJ (Rep) 353**, at page 357 had outlined the following basic rule for our guidance:

*“It is a well-known principle of construction of statute that the intention of Parliament must be determined from the words used and in construing the words used, it is sometimes necessary to construe the meaning of the words, not by bare reading of the words themselves but by looking also at the rest of the words in the section.”*

38. The principle of statutory interpretation is not codified. It is governed by the common law and is therefore capable of endogenous development by the courts to meet new technical problems or social needs. In general the court’s function is to ascertain the intention of Parliament and that is done from the language that Parliament has used. (Source: “The Changing Judicial Role; Human Rights, Community Law and the Intention of Parliament” by Daine Mary Arden – Member of the Court of Appeal of England and Wales).
39. This court had recently touched on this issue in **Kesatuan Pekerja-Pekerja Bukan Eksekutif Maybank Bhd. v. Kesatuan Kebangsaan Pekerja-Pekerja Bank & Anor (2017) 2 ILR 230** where it was held: The function of a court

when construing an Act of Parliament is primarily to interpret the statute in order to ascertain what the legislative intent is; and this is primarily done by reference to the words used in the provision. Crease on Legislation (9<sup>th</sup> Ed. 2008) at page 611 states:

*“the cardinal rule for construction of legislation is that it should be construed according to the intention expressed in the language used. So the function of the Court is to interpret legislation “according to the intent of them that made it” and that intent is to be deduced from the language used.”*

40. Section 214A(1) of the NLC was inserted by the National Land Code (Amendment) Act 1969 (Act 26) to prevent fragmentation of estate land by dealing with the land in question . A good guidance in interpreting this section was laid down by Jemuri Sarjan SCJ in **Kumpulan Sua Bentong Sdn. Bhd. (1992) 1 MLJ 263 (SC)** where his Lordship had made the following observation:

*“It is our view that, in accordance with established canon of construction of statutes, s 214A(1) should not be construed in isolation, divorced from other provisions of the section. It is*

*well established that every section of an Act must be considered as a whole and self-contained with the inclusion of saving clauses and provisos. Subsections in a section must, therefore, be read as part of an integral portion and being inter-dependent, each portion throwing light, if need be, on the rest, and harmonious construction should be placed on their words for the purpose of giving effect to the legislative intent and object. As we understand it, the object of s 214A is to prevent and prohibit the fragmentation of estate land within the meaning of sub-s (11).....at the material time.”*

41. “It is well-settled that, when a statute is susceptible of two or more interpretations, normally that interpretation should be accepted as reflecting the will of the legislature which is presumed to operate most equitably, justly and reasonably as judged by the ordinary and normal conceptions of what is right and what is wrong and of what is just and what is unjust.” (per. – Augustine Paul FCJ in the case of **Ex Parte: Guan Teck Sdn. Bhd. (substituting Lim Oo Gwen, Deceased) (2010) 1 MLJ 1.**
42. Section 214A of the NLC itself is quite a long section. It contains 12 subsections. The general title of section 214A

is “Control of transfer of estate land.” The actual intent and object of section 214A can be gathered from the Parliamentary Hansard dated 25.05.1972 when the section was tabled in Parliament. It was said by the Minister concerned as follows:

*“Berkenaan dengan pindaan-pindaan kepada Seksyen 214(A) pula maka pindaan itu adalah bertujuan untuk mengawal dengan lebih ketat lagi pemecahan ladang atau kumpulan ladang-ladang yang berkembar yang luasnya tidak kurang daripada 500 ekar. Di bawah pindaan-pindaan yang dicadangkan itu, maka adalah menjadi satu kesalahan yang boleh dihukum di dalam mahkamah bagi sesiapa yang memindah milik ladang atau cuba memindah milik ladang tanpa mendapat kebenaran terlebih dahulu dan boleh juga dihukum dengan hukuman penjara dan juga didenda, pada hal di bawah Seksyen 214(A) sebelum dipinda dahulu yang melakukan kesalahan itu tidaklah dapat dihukum di mahkamah.”*

43. The emphasis from the above speech is that “adalah bertujuan untuk mengawal dengan lebih ketat lagi pemecahan ladang atau kumpulan ladang-ladang yang berkembar yang luasnya tidak kurang daripada 500 ekar”.

In short, the sole object or intent of the amendment tabled was to prohibit or prevent fragmentation of estate land. The Court can only use the trite tools of interpretation of statute which, in essence, is to give it a meaning which promotes the objective of the statute concerned.

44. Our view is that in order to correctly interpret section 214A(1) of the NLC we need to read and consider the section as a whole, not only subsection 214A(1). That subsection should not be construed in isolation. All the subsections in the section are inter-dependent of each other. Each subsection throws light on the next. All the 12 subsections relate to the same object or intent i.e. to control and prevent fragmentation of estate land.

45. For that purpose, we will now reproduce the whole of section 214A of the NLC:

**“214A. Control of transfer of estate land.**

*(1) Notwithstanding anything contained in this Act, no estate land is capable of being transferred, conveyed or disposed of in any manner whatsoever, unless approval of such transfer, conveyance or disposal has first been obtained from the Estate*

*Land Board (hereinafter referred to as “the Board”) established under sub-section (3).*

- (2) The Registrar shall not register any instrument of transfer of such land under Part Eighteen of this Act unless such instrument is accompanied by a certificate of approval granted by the Board.*
- (3) For the purpose of this section there shall be established an Estate Land Board consisting of-*
  - (a) the State Secretary, who shall be the Chairman;*
    - (aa) the State Director, who shall be the Secretary;*
  - (b) not more than four members appointed by the State Authority from amongst members of the Public Service.*
- (4) The proprietor or any co-proprietor of any estate land desiring to transfer, convey or dispose of in any manner whatsoever such land shall, together with the person or persons to whom the land is to be transferred, conveyed or disposed of, jointly submit an application to the Secretary of the Board in Form 14D.*
- (5) The Board may approve an application made under sub-section (4) and shall have power to refuse or cancel an approval of any such application if-*
  - (a) It is satisfied that any statement or representation made in the application is false or incorrect; or*



- (b) *It is satisfied that the applicant fails or refuses to comply with any direction given or restrictions or conditions imposed by it; or*
- (c) *It appears to it that the approval of the application will not be in the public interest.*
- (6) *Decision of the Board shall be by majority of votes; and in the case of equality of votes the Chairman shall have a casting vote.*
- (7) *Before making any decision the Board may as it thinks fit call any person to give any statement before it or produce any document to be examined by it.*
- (7A) *The decision of the Board shall be conveyed by the Secretary of the Board to the applicants referred to in sub-section (4) as expeditiously as possible.*
- (8) *Where approval of an application under sub-section (4) is refused or cancelled by the Board, the applicant may, within 30 days after the communication to him of the Board's decision of such refusal or cancellation of appeal in writing to the State Authority.*
- (9) *The State Authority may confirm or reverse the decision of the Board:*

*Provided that where the decision of the Board is reversed by the State Authority, the State Authority may give such*

*direction or impose, such re-striction or condition as it may think fit.*

**(10)** *Any person who obtains or attempts to obtain approval of the Board by knowingly making or producing or causing to be made or produced any false or fraudulent declaration, certificate, application or representation, whether in writing or otherwise or who fails or refuses to comply with any direction, restriction or condition imposed on him shall be guilty of an offence and shall on conviction be liable to a fine not exceeding RM10,000 and where the offence is a continuing one shall be further liable to a fine of not exceeding RM1,000 in respect of each day the offence is committed.*

**(10A) (a)** *Any person who transfers, conveys or disposes of or attempts to transfer, convey or dispose of in any manner whatsoever, any estate land in contravention of sub-section (1), shall be guilty of an offence and shall on conviction be liable to imprisonment for a term of not less than one year and not more than three years and to a fine not exceeding ten thousand ringgit.*

**(b)** *For the purposes of this section, the execution of an agreement to convey or dispose of the whole of an estate to two or more persons, or to convey or dispose of any portion or portions of an estate land to one or more*

*persons, without the approval of the Board, shall be conclusive proof that the estate land is conveyed or disposed of in contravention of sub-section (1): and any act to demarcate an estate land or to cause or permit the demarcation of estate land is conveyed or disposed of in contravention of sub-section (1); shall be prima facie proof that the person so acting, causing or permitting attempts to transfer, convey or dispose of the estate land in contravention of sub-section (1).*

*(11) For the purpose of this Act “estate land” means any agricultural land held under one or more than one title the area or the aggregate area of which is not less than 40 hectares and the alienated lands constituting such area are contiguous.*

*(12) For the purpose of this Act, alienated lands held under final title or qualified title or a combination thereof, shall be taken to be contiguous notwithstanding that they are separated from each other only by such land as is used, required or reserved for roads, railways or waterways.”*

**46. The main thrust of the appeals relates to the SPA dated 28.10.2005 entered into between Gula Perak and Faithmont. The relevant terms of the SPA were later**

recorded as consent orders in the ongoing suits between Gula Perak, Ambank and Faithmont at the Kuala Lumpur High Court. The salient points of the SPA are as follows:

- (i) the land in question related to “all that parcel of oil palm estate”. It involved the whole area of the land 20225, Lot No. 11447, Mukim Durian Sebatang, District of Hilir Perak, Perak Darul Ridzuan. It is not an agreement which has the effect of fragmentation of the said land;
- (ii) the intended sale was subject to the conditions and restrictions expressed or implied in the document of title and also subject to the terms and conditions of the agreement itself;
- (iii) clause 2.1(b) of the agreement had an express term to the effect that Gula Perak, as the vendor shall first obtain the approval of the Land Board before any transfer of the said land can be effected;
- (iv) the Proviso to clause 2.1 provided to the effect that the SPA shall become unconditional on “the Unconditional Date” i.e. the last date on which the

several matters stipulated in clause 2.1 (a)(b) and/or (c), which include the approval of the Land Board having been obtained;

- (v) it is also provided in clause 2.1 that if the condition relating to obtaining the Land Board's approval was not fulfilled within the stipulated period, the vendor shall be at liberty to rescind the agreement and thereafter return all monies previously paid by Faithmont to the vendor (which includes the amount of RM5.7 million which had been paid to the vendor) and Faithmont as the purchase shall redeliver vacant possession of the land to the vendor. Thereafter the vendor shall be at liberty to resell or deal with the said land as it shall see fit;
- (vi) in clause 6, it is provided that Faithmont's solicitors shall not present the Memorandum of Transfer in respect of the land for registration unless Faithmont have fully paid the balance sum to the vendor's solicitors pursuant to the terms of the agreement and

the balance sum shall be paid by Faithmont on or before (2) months from the “Unconditional Date”.

47. Reading the SPA as a whole, it is not in dispute that the agreement was a conditional or contingent agreement, i.e. conditional upon the approval being obtained from the Land Board for the transfer of the land. Being a conditional agreement it was not enforceable until all the conditions have been fulfilled. If the conditions are not fulfilled then the said agreement would be of no effect and all monies paid by Faithmont to the vendor were to be returned and vacant possession to be redelivered to the vendor. The agreement shall not take effect unless and until all the conditions are fulfilled. (see: Federal Court’s decisions in **National Land Finance Cooperative Society Ltd. v. Sharidal Sdn. Bhd. (1983) 2 MLJ 211**, and **Khatijah binti Abdullah & Ors v. Mohd. Isa bin Biran (2017) 2 MLJ 1**; section 33 of the **Contract Act 1956**).
48. In the present case, the State Authority’s consent as well as the Land Board’s approval had already been obtained

on 20.11.2015 and 29.02.2016 respectively, before the said land was registered and transferred to Faithmont on 23.03.2016.

49. Section 214A(1) of the NLC does not prohibit the making of a conditional or contingent agreement to sell an estate land which has an express term incorporated in it that the intended sale is subject to the parties obtaining the approval of the Land Board. The prohibition under section 214A(1) is against an act of transfer, conveyance or disposal of estate land without the approval of the Land Board. The SPA being a conditional or contingent agreement is therefore not illegal for non-compliance with the provisions of section 214A(1) of the NLC. Until the approval of the Land Board was obtained and the pre-condition was then fulfilled, future performance under the agreement remained unenforceable. The SPA shall not take effect unless and until the condition is fulfilled when the Land Board's approval is obtained. The SPA by itself did not have the effect of transferring or disposing the said land from Gula Perak to Faithmont.

**50. Subsection 214A(2) throws some light on the interpretation of subsection 214A(1). It prohibits the Registrar of Land Title from registering any instrument of transfer of estate land unless such instrument is accompanied by a certificate of approval granted by the Land Board. The clear inference from this sub section is that the element of control or prohibition on transfer, conveyance or disposal of estate land starts effectively at the stage of forwarding all the relevant documents to the Registrar of Land Title for registration of the transfer of title. By reading subsection (1) and subsection (2) together one will get the indication that the Land Board's approval needs only to be obtained at the stage before registration of title is to be done, but not before that.**

**51. Subsection 214A(4) is also relevant in interpreting subsection 214A(1). It contemplates that both the intended vendor and purchaser shall jointly submit an application to the Secretary of the Land Board in Form 14D for its**



approval. It is a mandatory statutory requirement that both of them must jointly do in applying for the approval.

52. The issue relating to joint application for the approval was considered by Augustine Paul JC (later FCJ) in the case of **Rengamah a/p Rengasamy v. Tai Yoke Lai & Anor (1998) 1 CLJ 987**, where His Lordship had this to say (with which we agree):

*“The submission of the plaintiff gives the impression that there is a prohibition against an owner of estate land entering into any form of agreement with an intended purchaser before having first obtained the approval of the Estate Land Board. With respect, I am unable to agree with that view. Section 214A(4) clearly contemplates that the owner of an estate land must make the application for approval jointly with the intended purchaser.”*

*“In fact one of the particulars required to be filled in the prescribed form is the name and address of the intended transferee or purchaser. Thus the existence of an intended purchaser is a pre-requisite for making an application for approval to the Estate Land Board. Before an intended purchaser can come into existence there must have been*

*negotiations and agreement between him and the proprietor on the price and other relevant terms. Surely a record of the negotiations requires to be kept to facilitate completion of the agreement when the appropriate time comes. This can be best achieved by the execution of a provisional or conditional agreement between them. This, in my opinion, is contemplated by s.214A(4)”*

53. Form 14D requires inter alia the following particulars to be filled for the consideration of the Land Board, *inter alia*:
- (a) name of the proprietor of the land;
  - (b) name and address of the intended purchaser; and
  - (c) purpose of the transfer.

The form is to be signed both by the proprietor as well as the purchaser who have to certify that those information given are correct.

54. It can safely be concluded that before Form 14D is submitted to the Land Board, it must be fully completed for the Board’s consideration. The requirement to state the name and address of the intended purchaser in the said form as well as the signature of the purchaser shows that

the existence of an intended purchaser is a pre-requisite for making an application for approval to the Land Board. Section 214A of the NLC contemplates that a conditional agreement between the proprietor of the land and the intended purchaser would be in place at the time when Form 14D is to be jointly submitted to the Board for its approval. It would only make practical sense if the proprietor and the intended purchaser had first entered into a conditional agreement even in a simple form before any application to the Land Board for approval is possible. This would enable the Land Board to consider the application, the terms of the sale and purchase and the genuineness of the transaction. The court ought to have taken a common sense approach and consider the practical aspect of commercial transactions involving the sale and purchase of estate lands.

55. The Court of Appeal in its judgment had indicated that Parliament by enacting section 214A(1) of the NLC had expressed a clear intention to prohibit transfer, convergence or disposal of estate land in any manner

- whatsoever without the prior approval of the Land Board on pain of criminal prosecution; and therefore it stands to reason that such an agreement will likewise be against the spirit and policy consideration behind section 214A(1) of the NLC.
56. With respect we are not in agreement with the Court of Appeal on this point. The Court of Appeal relied extensively on the spirit and policy consideration as well as the legislative intent behind section 214A(1) of the NLC.
57. In our view, the spirit and policy consideration as well as the legislative intent in enacting a statutory provision can best be declared in the words used in the statute itself. Where the words are unambiguous, the court is bound to give effect to them. (see: **Sussex Peerage Case (1844) “Ci & F 85; and Public Prosecutor v. Tan Tatt Eek (2005) 2 MLJ 685.**)
58. “If the language is clear and unambiguous and applies accurately to existing facts, it shall accept the ordinary meaning, for the duty of the court is not to delve deep into

the intricacies of the human mind to ascertain one's undisclosed intention, but only to take the meaning of the words used by him, that is to say his expressed intentions.”

(see: **Kamala Devi v. Takhatumal AIR 1964 SC 859**; as adopted and affirmed by this Court in **Lembaga Hasil Dalam Negeri Malaysia v. Alam Maritim Sdn. Bhd. (2014) 1 MLJ 1**).

59. The same principle was emphasised by the House of Lords in **Farrell v. Alexander (1976) 2 ALLER 721** (which was later adopted and applied by this Court in **Generation Products Sdn. Bhd. v. Majlis Perbandaran Klang (2008) 6 MLJ 325**) as follows:

*“Since the draftsman will himself have endeavored to express the parliamentary meaning by words used in the primary and most natural sense which they bear in that same context, the court’s interpretation of the meaning of the statutory words used should thus coincide with what Parliament meant to say.*

*The first or ‘golden’ rule is to ascertain the primary and natural sense of the statutory words in their context, since it is to be presumed that it is in this sense that the draftsman is using the words in order to convey what it is that Parliament meant to say. They will only be read in some other sense if that is*

*necessary to obviate injustice, absurdity, anomaly or contradiction, or to prevent impediment of the statutory objective.”*

60. Applying the above well-established principle to the facts and circumstances of the present case, we are of the view the Court of Appeal erred in law in its interpretation that the legislative intent behind section 214A(1) of the NLC was to prohibit any agreement, including a conditional or contingent agreement for the transfer, conveyance or disposal of estate land without obtaining prior approval of the Land Board. The Court of Appeal had also erred in law in holding that the conditional SPA was against the spirit and policy of section 214A(1) of the NLC in that estate land owners are precluded from executing conditional SPA without first obtaining the Land Board’s approval.
61. The Court of Appeal relied heavily on the decision of the Court of Appeal in **Tai Thong Flower Nursery Sdn. Bhd. v. Master Pyrodor Sdn. Bhd. (2014) 9 CLJ 74 (“Tai Thong”)** which unanimously held that the moment an agreement to transfer estate land is executed without approval of the

Land Board, it became proof that the transfer contravenes section 214A(1) of the NLC; and the execution of the agreement was void.

62. The Court of Appeal, in paragraph 77 of its judgement, agreed with the pronouncement in **Tai Thong** (supra) that the obtaining of the approval of the Land Board must be done before the execution of the agreement by which the land would be transferred, conveyed or disposed of.
63. Our view is that the approach taken in **Tai Thong** (supra) cannot be relied upon and therefore not applicable to the facts of the present case. The facts and real issues in **Tai Thong** (supra) are different and can easily be distinguished.
64. In **Tai Thong** (supra) the Court of Appeal did not deal with the issue of a conditional or contingent agreement involving estate land, as in the present case. The issue that arose in **Tai Thong** (supra) was whether the Land Board's approval had in fact been obtained prior to the transfer of the land in question and registered in the plaintiff's name.

In **Tai Thong** (*supra*), the challenge by the defendant was whether the estate land had been transferred and registered in the plaintiff's name without obtaining the Land Board's approval in contravention of section 214A(1) of the NLC. In other words, the core issue there related to the legality of the actual act of transferring or registering of the land in question in the plaintiff's name, before the prior approval by the Land Board; not the legality of a conditional sale and purchase agreement which was subject to a pre-condition that the transfer can only be effective upon getting the approval from the Land Board. In the present case, the transaction has not reached the stage of the actual act of transfer and registration of the land in question yet.

65. We are in agreement with the majority decision of the Court of Appeal in **Vellasamy Pennusamy & Ors (2010) 5 MLJ 437** which held, *inter alia*, that section 214A(1) of the NLC does not prohibit the execution of a conditional agreement for sale of estate land. We share the same sentiment with the Court of Appeal in that case as pronounced below:



*“There is no need to obtain approval first before entering into any form of agreement with the intended purchaser. The agreement in this case accorded with the language and spirit of s.214A(1) of the NLC as it provides that there can be no transfer of the land, without approval of the Estate Land Board having first been obtained. The agreement, being a conditional agreement, was therefore not illegal, and could not be declared null and void. (Emphasis added). It would only become null and void if the Estate Land Board refused approval of the sale of the land.”*

66. The procedural steps that need to be taken for parties to comply with the requirements of section 214A of the NLC involving any transfer of estate land had been correctly laid out by the Court of Appeal in **Vellasamy’s** case, (with which we agree) as follows:

*“The rigmarole to comply with the provisions of s.214A of the NLC would be as follows. Firstly, the parties have to enter into a sale agreement. Secondly, when the parties have completed all the mutual obligations under the contract, then they are ready to transfer the property. Thirdly, it is at this point of time, that the parties apply for the statutory consent. Fourthly, after obtaining the statutory consent, the land is duly transferred and registered*

*in the name of the purchaser. However, a caveat must be incorporated. If and only if for some reason the statutory consent is refused, then the sale will fall through.”*

67. In a more recent case, this Court in **Khatijah binti Abdullah** (supra) made a ruling which in effect supports our finding on section 214A(1) of the NLC. It was ruled, *inter alia*:

*“(2) The requirement for consent to transfer from the State Authority is a condition precedent which must be fulfilled before any transfer of the Land is possible. Until fulfilled by the respondent, the SPA shall not take effect and the sale could not be completed. The trial judge is correct in his observation that any transfer of the Land in breach of the restriction in interest would be incapable of registration.*

*(24) Learned counsel for the appellants had cited the case of National land Finance Co-operative Society Ltd b Sharidal Sdn Bhd (supra) in support of his submissions that failure to fulfill the condition precedent rendered the SPA void and enforceable. In that case, the Federal Court had said that where parties had entered into a sale with a condition that such sale is contingent upon approval from another authority over which the parties have no control, such a condition is a condition which is known in the law of contract as a ‘contingent condition’ the effect of which is that the contract shall not take*

*effect unless and until the condition is fulfilled. (29)*

*Likewise in the present appeal, we find that requirement for consent to transfer from the State Authority is a condition precedent which must be fulfilled before any transfer of the land is possible. Until fulfilled by the respondent, the SPA shall not effect and the sale could not be completed.”*

68. Subsections 214A(10A)(a) and 214A(10A)(b) of the NLC were raised by the parties during their submissions before us. The Court of Appeal relied on subsection 214A(10A)(a) of the NLC to support its finding that the SPA in question contravened section 214A(1) of the NLC and therefore the parties had committed an offence thereunder. It was ruled by the Court of Appeal that the SPA was an “attempt” to transfer, convey or dispose an estate land “in contravention of subsection (1)”. Subsection 214A(10A)(a) creates an offence on any person who transfers, conveys or disposes of or attempts to transfer, convey or dispose in any manner whatsoever, any estate land in contravention of subsection 214A(1) of the NLC. It must be noted that the offence relates to an act of transfer, conveyance or disposal or its attempt *“in contravention of*

*subsection (1)*”. If the transfer, conveyance or disposal or its attempt does not contravene subsection (1), then there is no offence committed under subsection 214A(10A)(a). In the present case, as we have highlighted above, the SPA was not in breach of subsection 214A(1) as it was only a conditional agreement subject to the approval of the Land Board being obtained by the parties. It was not an outright sale of the land. If the approval of the Land Board was not obtained the SPA would be ineffective. Therefore, the penalty provision in subsection 214A(10A)(a) is irrelevant and not applicable.

69. On the issue of subsection 214A(10A)(b) of the NLC, the Court of Appeal had duly considered the provision and ruled that the said subsection is not applicable to the facts of the present case. We agree with the ruling made. At paragraphs (52) and (53) of its judgement, the Court of Appeal held that:

*“(52) The effect of the provision is to relieve the party wishing to prove breach of section 214A(1) of the burden of adducing prima facie evidence of such breach. Proof of execution of the*

*agreement is sufficient. If Yakin Tenggara's reliance on this part of the judgment is to contend that the execution of the agreement on 28.10.2005 and the consent judgment entered into on 11.11.2015 pursuant to the compromise order provide proof that Gula Perak had infringed section 214A(1), then we must say that the reliance is misplaced.*

*(53) Section 214A (10A)(b) only applies where the conveyance or disposal of estate land is to two or more persons (where it involves the whole of the estate land), and to one or more persons (where it involves any portion or portions of the estate land). But that is not the factual matrix of the case before us, which was an agreement to transfer the whole of the estate land to only one party, i.e. to Faithmont. This takes the case outside the scope of section 214A (10A)(b). Yakin Tenggara cannot therefore rely on the execution of the agreement as prima facie proof that section 214A(1) had been infringed."*

**70. On this issue we share the same view with learned counsel for Gula Perak that in fact, there is no transfer of the Property without the approval of the Estate Land Board in this case. There is also no attempt to transfer the property without the approval of the Estate Land Board as the SPA was conditional upon the approval of the Estate Land**

Board and if such approval was not obtained, the SPA would not be completed and as such, there is no attempt to transfer estate land in contravention of section 214A(1) of the NLC.

## **Conclusion**

71. In the upshot, we hold the view that subsection 214A(1) of the NLC does not prohibit a conditional agreement entered into between parties, so long as the general consensus between them was that no transfer of the said land was to be effected until the Land Board's approval was obtained. The said conditional agreement would not take effect unless and until the condition precedent was fulfilled.
72. Based on the facts and circumstances of the present case, the SPA in question being a conditional agreement did not contravene subsection 214A(1) of the NLC and therefore not illegal. It could not be declared null and void. Subsection 214A(1) of the NLC was not intended to bar parties from entering into a conditional SPA involving an estate land. In short, there is no need to obtain an approval

of the Land Board first before entering any form of conditional agreement with the intended purchaser involving a sale of estate land.

73. The conditional SPA in the present case is merely a manifestation of the vendor (Gula Perak) desiring to transfer, convey or dispose of such land to be followed by joint submission with Faithmont to apply for an approval of the Land Board vide an application in Form 14D and as such the said SPA as well as the consent order were within the intent and scope of sections 214A(1) and 214A(4) of the NLC.

74. We therefore allow all the 6 appeals with costs. We set aside the related decisions and order of the Court of Appeals. This decision is by majority of 3:2 of Justice Ramly Hj Ali, Justice Azahar Mohamed and Justice Alizatul Khair Osman Khairuddin, while the minority decision is by Justice Zulkefli Ahmad Makinudin and Justice Balia Yusof Hj Wahi.

75. We make a consequential order that the private caveat lodged by Tan Sri Elias Omar, Director of Gula Perak pursuant to presentation No. 3198/2018 on 5.3.2018 to be forthwith removed by the Registrar of Land Office, Perak, upon service of the order of this court pursuant to section 417 of the NLC.

76. Costs (subject to allocator fee):

- (i) For **Gula Perak's Appeals** – costs of RM100,000 for both appeals to be paid by the respondents therein;
- (ii) For **Ambank's Appeals** – costs of RM100,000 for both appeals to be paid by the respondents therein;
- and
- (iii) For **Faithmont's Appeals** – costs of RM100,000 for both appeals to be paid by the respondents.

**Dated: 10<sup>th</sup> October 2018**

*sgd*

**RAMLY ALI  
JUDGE FEDERAL COURT  
MALAYSIA**



## **Solicitors:**

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3. Yoong Sin Min (with Poh Choo Hoe and Merie Chan Mong Yi)  
*Messrs Shook Lin & Bok*  
... for Ambank (M) Berhad
4. Gopal Sri Ram (with S. Ravenesan, Chin Yan Leng, David Yii, Siti Nur Amirah Aqilah bt Adzman and Damien Chan)  
*Messrs S Ravenesan*  
... for Yakin Tenggara Sdn Bhd
5. Wong Rhen Yen (with Jamie Wong, Shugan Raman and Kelvesh Deshenraj)  
*Messrs Jamie Wong*  
... for Datuk Lim Sue Beng

## **Cases referred to**

1. Tai Thong Flowers Nursery Sdn. Bhd. v. Master Pyrodor Sdn. Bhd. (2014) 9 CLJ 74
2. Rengamah a/p Rengasamy v. Tai Yoke Lai & Anor (1998) 5 MLJ 260
3. Siva Segara Kanapathi Pillay v. Public Prosecutor (1984) 1 CLJ (Rep.) 353

- 4. Kesatuan Pekerja-Pekerja Bukan Eksekutif Maybank Bhd. v. Kesatuan Kebangsaan Pekerja-Pekerja Bank & Anor (2017) 2 ILR 230**
- 5. Kumpulan Sua Bentong Sdn. Bhd. (1992) 1 MLJ 263 (SC)**
- 6. Ex Parte: Guan Teck Sdn. Bhd. (substituting Lim Oo Gwen, Deceased) (2010) 1 MLJ 1**
- 7. National Land Finance Cooperative Society Ltd. v. Sharidal Sdn. Bhd. (1983) 2 MLJ 211**
- 8. Khatijah binti Abdullah & Ors. v. Mohd. Isa bin Biran (2017) 2 MLJ 1**
- 9. Rengamah a/p Rengasamy v. Tai Yoke Lai & Anor (1998) 1 CLJ 987**
- 10. Sussex Peerage Case (1844) Ci & F 85**
- 11. Public Prosecutor v. Tan Tatt Eek (2005) 2 MLJ 685**
- 12. Kamala Devi v. Takhatumal AIR 1964 SC 859**
- 13. Lembaga Hasil Dalam Negeri Malaysia v. Alam Maritim Sdn. Bhd. (2014) 1 MLJ 1**
- 14. Lords in Farrell v. Alexander (1976) 2 ALLER 721**
- 15. Generation Products Sdn. Bhd. v. Majlis Perbandaran Klang (2008) 6 MLJ 325**

16. **Tai Thong Flowers Nursery Sdn. Bhd. v Master Pyrodor Sdn. Bhd. (2014) 9 CLJ 74**
17. **Vellasamy Pennusamy & Ors. v. Gur;bachan Singh Bagawan Singh & Ors. [2010] 5 MLJ 437**

**Legislations Referred to:**

1. **National Land Code, 1965: section 214A**
2. **Contacts Act, 1950: section 24**
3. **Court of Judicature Act, 1964: section 73**

**Other References:**

1. **Changing Judicial Role; Human Rights, Community Law and the Intention of Parliament” by Daine Mary Arden – Member of the Court of Appeal of England and Wales.**